**HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE**

**Writ Petition No.13334 OF 1993**

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Between:

G.Rama Lakshmi

**... Petitioner**

AND

Nagarjuna Grameena Bank rep by its

Chairman, Khammam and another

**.....Respondents**

**::JUDGMENT::**

**Counsel for the Petitioner** : Sri P.B.Vijaya Kumar

**Counsel for Respondents** : Sri K.Srinivasa Murthy

**Dated 16..2..2006**

In this petition, the petitioner has prayed for quashing the proceedings bearing No.DPC/55/151/93 dated 10-5-1993 issued by the General Manager of Nagarjuna Grameena Bank, Khammam, whereby he communicated the decision of the Board of Directors of the Bank to dismiss the appeal filed by the petitioner against the order of dismissal. She has further prayed for issuance of a *mandamus* to the respondents to reinstate her with consequential benefits.

The petitioner joined the services of the Bank as Clerk-cum-Cashier/Typist on 8.11.1979. After three years, the Chairman-cum-Disciplinary Authority (hereinafter referred to as 'the Disciplinary Authority') vide his order dated 11.11.1982 placed the petitioner under suspension. This was followed by memorandum dated 3.1.1983 issued for holding the enquiry against the petitioner under Chapter IV of the Bank's Staff Service Regulations, 1980 (for short 'the Regulations') on the following charges:

a. It is reported that you had paid Rs.35,000/- (Rupees Thirty Five Thousand only) to Shri P.Harshavardhan, Field Assistant and the then in-charge Branch Manager on 29-6-1982 being the amount of S.B. withdrawal in respect of S.B. Account No.2626 of Shri P. Bhaskar Rao, which was not signed by the depositor.

The voucher was not branded with cash 'paid' stamp by you, after making the payment. The voucher was also not passed by the then Incharge Branch Manager for payment, nor was it posted in the relative ledger folio, by you.

b. It is reported that you had paid a sum of Rs.50,000/- (Rupees Fifty thousand only) on
27-9-82 to Shri P. Harshavardhan, F.A. and the then in-charge B.M. being the aggregate amount in respect of the following cheques:-

| S.B A/c. No. | Cheque No. | Date | Amount Rs. |
|---|---|---|---|
| 1. 1800 | 103881 | 3-9-1982 | 15,000/- |
| 2. 1800 | 103882 | -do- | 15,000/- |
| 3. 1800 | 103883 | -do | 15,000/- |
| 4. 1800 | 103884 | -do- | 5,000/- |
| | | | - - - - - - - - |
| Total | | | 50,000/- |

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The above cheques were drawn by I.T.D.A., Palwoncha in favour of Shri R. Yellaiah and paid to the payee in the usual course on 4-9-1982. But, these cheques were reportedly paid by you again on 27.9.1982 to Shri P. Harshavardhan, the then in-charge B.M. The following items appear to have been altered on the above cheques:-

i. Date of the cheque was altered to read as
24-9-1982 instead of 3-9-1982.

ii. Branch Manager's passing scroll number was altered to read as
20, 21, 22, 23 instead of 10, 11, 12 and 13.

iii. It is reported that you had paid Rs.5,000/- (Rupees Five thousand only) to Shri P. Harshavardhan, the then In-charge Branch Manager on 12-4-1982 being the amount of one S.B. withdrawal in respect of S.B. Account No.2117 of Shri K. Sudhakar Reddy, without the signature of the depositor. The voucher was not branded with 'Cash paid' rubber stamp by you, after payment of cash.

iv. You had deliberately neglected balancing of S.B. Accounts, obviously in connivance with Shri P. Harshavardhan, the then in-charge Branch Manager perhaps in order to facilitate fraudulent transactions in the S.B. Accounts."

After receiving the charge sheet, the petitioner submitted an application dated 17.12.1984 to the Enquiry Officer for permission to inspect certain records and also to engage an advocate by contending that she will not be able to effectively cross-examine the witnesses. The Enquiry Officer accepted the petitioner's request for inspection of record, but did not accede to her request for being allowed to avail the services of an advocate. The Enquiry Officer fixed the dates of enquiry as 5.11.1985, 29.11.1985, 27.2.1986 and 19.3.1986. On the first two of these dates, the proceedings were adjourned at the request of the petitioner. On the remaining two dates, she did not bother to appear. Consequently, the Enquiry Officer held ex parte proceedings and submitted report dated 30.4.1986 with the conclusion that all the charges levelled against the petitioner have been proved. The Disciplinary Authority accepted the findings and conclusion recorded by the Enquiry Officer and issued notice dated 17.12.1986 to the petitioner requiring her to show cause as to why she may not be dismissed from service. The petitioner filed reply to contest the notice. Thereafter, she was given opportunity of personal hearing. At the conclusion of hearing, the Disciplinary Authority passed an order dated 15.1.1987 and confirmed the proposed penalty.

The petitioner challenged the order of punishment by filing an appeal before the Board of Directors of the Bank. After sometime, she filed Writ Petition No.2270 of 1993 with the complaint that the decision of her appeal was being unduly delayed. The same was disposed of by the learned Single Judge of this Court on 2.3.1993 with the direction that the petitioner's appeal be decided within three months.

In compliance of the direction given by the court, the Board of Directors of the Bank in its meeting held on 5.5.1993 considered the petitioner's appeal and dismissed the same by recording the following observations:

> "All the contentions raised by the Appellant in her appeal dated Nil (received by the Bank on 19.3.1993) are examined in the light of the Chairman and Disciplinary Authority's observations and decisions and found that the charges to the extent held by the Disciplinary Authority are proved beyond doubt and further the findings are based on evidences. Mere acquittal by the

criminal court does not entitle the appellant for reinstatement so long as there is sufficient evidence in support of the findings of the Disciplinary Authority. As the proven acts of misconduct committed by the Appellant are of grave nature and detrimental to the interests of the Bank, it is found that the penalty imposed was just and proportionate to the gravity of the proven charges. After satisfying that the principles of natural justice, equity and fair play have been adequately observed while dealing with the issues raised by the appellant and also the findings of the Disciplinary Authority, the Board has unanimously decided to confirm the punishment namely "Dismissal" from the Bank's service inflicted on the Appellant by the Chairman and Disciplinary authority."

The petitioner has challenged the proceedings of enquiry and the decision of appeal which were conveyed to her by the General Manager of the Bank vide letter dated 10.5.1993 on the following grounds:

a. the proceedings of enquiry are vitiated due to violation of the rules of natural justice because she was not allowed to engage an advocate and on that account, she could not effectively defend herself.

b. the Enquiry Officer arbitrarily passed order for ex parte proceedings and did not give her opportunity to adduce defence evidence.

c. copy of the enquiry report was not supplied to her along with the show cause notice.

d. the punishment of dismissal is arbitrary, unjust and shockingly disproportionate.

e. in the face of the finding of not guilty recorded in Criminal Case No.398 of 1987 (**State vs. Pudumbaka Harshavardan and others**) by the Court of Additional Magistrate of First Class, Kothagudem, the Enquiry Officer could not have held her guilty of misconduct.

In the written statement filed on behalf of the Bank, it has been averred that the order of punishment was passed by the Disciplinary Authority because the petitioner was found guilty of grave misconduct. It has been further averred that the enquiry was held against the petitioner in consonance of the rules of natural justice and she was given full opportunity of defence. According to the Bank, ex parte proceedings were held because the petitioner did not cooperate with the Enquiry Officer and did not even bother to appear on 27.2.1986 and 19.3.1986. In regard to the criminal case, it has been averred that prosecution was launched against Sri P.Harshavardhan, in-charge Branch Manager, Sri J. Bhadru, Junior Clerk-cum-Cashier and the petitioner

for the offences under Sections 408, 420 and 471 of the Indian Penal Code, but the Court held that the charges were not proved against the petitioner due to lack of evidence. According to the Bank, the substratum of the allegations levelled against the petitioner in the disciplinary proceedings was substantially different from the allegations, which were subject matter of criminal case and, therefore, the findings recorded by the Additional Magistrate of First Class, Kothagudem were not binding on the disciplinary and the appellate authorities.

I have heard learned counsel for the parties and carefully perused the record. I have also gone through the file produced by Ms.Uma Devi, advocate for the Bank. The questions which arise for determination in this petition are:

1. Whether the proceedings of enquiry held against the petitioner are vitiated due to violation of the rules of natural justice.

2. Whether the punishment of dismissal imposed on the petitioner is wholly arbitrary, unjust and shockingly disproportionate and calls for interference by the Court.

3. Whether the finding recorded by Additional Magistrate of First Class, Kothagudem in Criminal Case No.398 of 1987 can be made basis for nullifying the order of punishment.

4.

**Re: Question No.1**

Sri P.B.Vijay Kumar argued that the orders passed by the disciplinary and appellate authorities are liable to be quashed because the petitioner was not allowed to avail the services of an advocate for the purpose of her defence and the Enquiry Officer arbitrarily held ex parte proceedings.

Ms.Uma Devi, learned advocate for the Bank argued that the decision of the Enquiry Officer not to entertain the petitioner's request for availing the services of an advocate does not have the effect of vitiating the enquiry because there is no provision in the Regulations for allowing the delinquent to be represented by an advocate. She further argued that the petitioner cannot complain of violation of the rules of natural justice on this count because the presenting officer was not an advocate or a legally trained person.

I have thoughtfully considered the respective arguments. The petitioner has neither averred nor has any material been produced before the Court to show that the officer appointed by the Bank to present its case before the Enquiry Officer was an advocate or a law graduate. He was only an officer of the Bank. It is thus clear that the petitioner was not pitted against a legally trained mind and she did not suffer from any handicap or disability in defending herself. That apart, the question of any prejudice to the petitioner on account of not being allowed the services of an advocate does not arise because it is an undisputed position that even though Enquiry Officer had fixed four different dates of hearing, she did not bother to appear before him and present her case. On the first two dates, she sought adjournment and on the next two dates, she did not even bother to inform the Enquiry Officer that she would not be attending the enquiry. Indeed, it is not her case that she had refrained from the enquiry proceedings under protest and had informed that she would not be attending the proceedings on account of denial of legal assistance. Therefore, it is not possible to agree with the learned counsel for the petitioner that the proceedings of enquiry are vitiated due to violation of the rule of effective hearing. In my view, the situation in which the petitioner finds herself is her own creation and, at this belated stage, she cannot take advantage of her own decision to abstain from the proceedings of enquiry.

Another facet of the first question which requires consideration is whether the orders passed by the disciplinary and appellate authorities should be quashed on the ground of non-supply of copy of enquiry report to the petitioner along with the show cause notice and consequential denial of opportunity to effectively represent her case against the proposed penalty. In my view, this question has to be answered in negative because in her reply to the show cause notice, the petitioner did not make any complaint regarding non-supply of the copy of enquiry report and her consequential inability to file a reply affidavit to the show cause notice. Even in the appeal filed against the order of punishment, the petitioner did not raise the plea that she could not effectively represent her cause because of non-supply of enquiry report. This omission on the petitioner's part clearly amounts to waiver of the objection regarding non-supply of copy of the enquiry report and she cannot be allowed to urge this as a ground for challenging the order of punishment and the one passed by the appellate authority. In my view, the right to raise objection against the non-supply of copy of the enquiry report was purely personal to the petitioner and, by

not raising it before the Disciplinary Authority or the appellate authority, she will be deemed to have given up the same.

There is another reason for my disinclination to entertain the petitioner's challenge to the order of punishment on the first two grounds because she has neither pleaded nor any evidence has been produced before the court to show that her case was prejudiced on account of rejection of her request for engaging a lawyer or non-supply of the copy of enquiry report. Though the rules of natural justice are multi-hyper dimensional and multi-faceted, but their applicability differs from case to case. One of the facets of the rules of natural justice is that no one shall be condemned unheard. In Sixties, Seventies and Eighties, the Courts used to invalidate the action taken by the employer on the ground of violation of the rules of natural justice simpliciter. This perhaps encouraged white collared employees to indulge in more indiscipline necessitating a re-thinking. Till one and half decade ago, the courts had insisted on rigorous compliance of the rules of natural justice and the theory of empty/useless formality was largely rejected. However, the judicial precedents of last fifteen years give a clear indication of the shift and now it must be treated as settled law that the court will not invalidate an action taken by the Disciplinary Authority acting in public domain only on the ground of violation of the rules of natural justice or violation of the procedure laid down by the rules, unless it is shown that such violation has prejudiced the defence/cause of the employee. This question was considered in **Janki Nath Sarangi Vs. State of Orissa**; **R.C.Sharma Vs. Union of India**; **Sunil Kumar Banerjee Vs. State of West Bengal**; **K.N. Tripathi Vs. State Bank of India**; **Mumtaz Hussein Ansari Vs. State of U.P.**; **Kashinath Dikshita Vs. Union of India**; **Chandrama Tiwari Vs. Union of India**; **Managing Director, ECIL Vs. B. Karunakar**; **Krishanlal Vs. State of Jammu and Kashmir; State Bank of Patiala Vs. S.K. Sharma , S.K. Singh Vs. Central Bank of India**; **State of Uttar Pradesh Vs. Shatrughanlal**; **Food Corporation of India Vs. Padamkumar Bhuvan**; **State of Uttar Pradesh Vs. Harendra Arora**; **Oriental Insurance Company Vs. S. Balakrishnan**; **State of Uttar Pradesh Vs. Rameshchand Manglik**; **Indra Bhanu Gaur Vs. Committee, Management of M.M Degree College** and **Divisional Manager, Plantation Division A and N Islands Vs. Munnu Barrick**.

In some of the earlier judgments, the Supreme Court expressed the view that burden to prove that the employee's cause had not been prejudiced on account of

violation of the statutory rules or the rules of natural justice was on the employer, but this issue should be treated as finally concluded the other way by virtue of the Constitution Bench judgment in **Managing Director, ECIL Vs. B. Karunakar** (supra) and subsequent decisions and the contrary view can no longer be treated as good law.

In **B. Karunakar's** case (supra), the Constitution Bench of the Supreme Court considered the apparent conflict of views expressed by two Benches in **Union of India Vs. Mohd. Ramzan Khan** and **K.C. Asthana Vs. State of Uttar Pradesh** on the interpretation of Article 311(2) of the Constitution (as amended by 42nd amendment). The Constitution Bench framed the following questions:

> "(i) whether the report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him?
>
> (ii) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?
>
> (iii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?
>
> (iv) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?
>
> (v) Whether the law laid down in Mohd. Ramzan Khan's case (supra) will apply to all establishments – Government and non-Government, public and private sector undertakings?
>
> (vi) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?
>
> (vii) From what date the law requiring furnishing of the report, should come into operation?
>
> (viii)Since the decision in Ramzan Khan's case (supra) has made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz. What was the law prevailing prior to 20th November, 1990?"

After answering the first question in affirmative, their Lordships considered the

ancillary questions and answered question No. (vi) in the following words:

> "The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

The Constitution Bench then held:

> "Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority', there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. (Underlining is ours)

In **Harendra Arora's** case (supra), the Supreme Court referred to the earlier judgment of the Constitution Bench in **Managing Director, ECIL Vs. B. Karunakar (**supra) and laid down the following propositions:

> i) From the case of ECIL it is plain that in cases covered by the Constitutional mandate i.e. Article 311 (2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. There-fore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.
>
> ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g. which is the competent authority to impose a particular punishment on a particular employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touch stone of prejudice.
>
> iii)Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice."

In **Indra Bhanu Gaur Vs. Committee, Management of M.M. Degree College** (supra), the Supreme Court considered the question whether non-payment of subsistence allowance could be a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

> "It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental proceedings." (Emphasis added)

In **Divisional Manager, Plantation Division A and N Islands Vs. Munnu Barrick** (supra), the Supreme Court referred to the judgments of the Constitution Bench in **B. Karunakar's** case (supra) and observed that, "the principles of natural justice cannot be put in a straight jacket formula. It must be viewed with flexibility. In a given case where a deviation takes place as regards compliance with the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. The employee must show sufferance of prejudice by non-supply of a copy of the enquiry report. A court will refrain from interfering with an order having regard to "useless formality theory, in a given case".

**Re-question No.2:**

Sri P.B.Vijay Kumar argued that the charges levelled against the petitioner were not serious enough to warrant her dismissal from service and a comparative lesser punishment of stoppage of increments without cumulative effect would have served the ends of justice. He lamented that while imposing the punishment, the disciplinary authority overlooked the past record of the petitioner, which was unblemished and argued that this Court may, in exercise of its power under Article 226 of the Constitution of India, modify the punishment. This submission was seriously opposed by Ms.Uma, who argued that the Court should not interfere with the discretion exercised by the employer in the matter of punishment. She submitted that the petitioner has been found guilty of financial irregularity and there is no warrant for taking a lenient view in such a case.

I have thoughtfully considered the entire matter. A reading of the enquiry report shows that the officer concerned had, after making a detailed reference to the documents produced during the course of enquiry, recorded a firm conclusion that all the charges levelled against the petitioner have been proved. The Disciplinary

Authority accepted the findings recorded by the Enquiry Officer and confirmed the proposed penalty. The Board of Directors independently examined the entire record and came to the conclusion that the punishment imposed by the disciplinary authority did not call for interference. In my view, the approach adopted by the Enquiry Officer, Disciplinary Authority and the appellate authority does not suffer from any patent legal infirmity and there is no warrant for exercise of the power of this Court under Article 226 of the Constitution of India to interfere with the employer's discretion in the matter of quantum of punishment.

The Courts power to interfere with the punishment imposed on the delinquent employee has also become subject matter of large number of cases. The terms and phrases like arbitrary, unreasonable and unconscionable and shockingly disproportionate are often used by the advocates representing the delinquent employees who seek intervention of the Court for invalidation of the order of punishment. The doctrine of proportionality and Wednesbury rule have also been pressed into service for persuading the Courts to interfere with the employers' prerogative to punish the employee. But, the courts have to constantly remain guard against adopting a populist approach in such matters and ordinarily refrain from interfering with the punishment imposed by the employer on a delinquent employee. The power of judicial review in such cases should be exercised with great care and circumspection. Only in exceptional cases, the Court may interfere with the punishment, if it is convinced that the same is wholly arbitrary or shockingly disproportionate to the misconduct found proved. For determining this, the Court has to take into consideration the factors like length of service of the delinquent, the nature of duties assigned to the employee having regard to their sensitiveness, performance norms, if any laid down by the employer, the nature of charges found proved, the past conduct of the employee and the punishment, if any, imposed earlier. Above all, the Court has to keep in mind the paramount requirement of maintaining discipline in the services and the larger public interest.

The doctrine of proportionality was invoked by the Supreme Court in **Ranjit Thakur v. Union of India** for quashing the order of punishment. The proposition laid down in that case reads as under:

> "Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the

court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

In **Union of India v. G.Ganayutham** the doctrine of proportionality was considered along with Wednesbury rule and the following propositions were laid down:

"(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational – in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.

(3) (a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgent of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

I n **Om Kumar v. Union of India** the Supreme Court considered the applicability of the doctrine of 'Proportionality' in the context of Article 14 of the Constitution, referred to the judgments in **Ranjit Thakur Vs. Union of India (**supra)**, B.C. Chaturvedi Vs. Union of India** and held**:**

"1) In this context, we shall only refer to these cases. In **Ranjit Thakur V. Union of India** this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In **B.C. Chaturvedi Vs. Union of India** this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would nor normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in **Ganayutham**."

2) Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

In **Regional Manager, U.P. SRTC v. Hoti Lal** the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:

> "The Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved by the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptional." (underlining is ours)

Reference also deserves to be made to the decisions of the Supreme Court in **State Bank of India v. Samrendra Kishore Endow; State of Uttar Pradesh v. Ashok Kumar Singh; State of Uttar Pradesh v. Nandkishore Shukla; State of Punjab Vs. Baxi Singh; Uttar Pradesh State Road Transport Corporation v. A.K. Parul; Union of India Vs. J.R. Gheman; Secretary A.P. SWRE I Society Vs. J. Prathap** wherein the Supreme Court disapproved the invoking of the doctrine of proportionality by the High Courts.

In **Director General, RPF v. Ch. Sai Babu** the Supreme Court reiterated that the High Court should ordinarily not interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

> "Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness,

exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

If the petitioner's case is considered in the light of the proposition of law laid down in the above noted cases, it is impossible to hold that the punishment imposed on her is arbitrary, unreasonable, unjust or shockingly disproportionate. At the time of initiation of departmental enquiry, she had served for just over 3 years. She was holding the position of confidence in a financial institution. The charges found proved against her are extremely serious. Therefore, the discretion exercised by the employer to impose the penalty of 'dismissal' cannot be tinkered by invoking the theory of compassion.

**Re: Question No.3**

Sri P.B.Vijay Kumar, referred to the judgment of the Additional Magistrate of First Class, Kothagudem to show that the accusation levelled against the petitioner of having caused financial loss to the bank was found not proved and argued that in view of the unequivocal finding recorded by the Court of competent jurisdiction, the enquiry officer and the disciplinary authority could not have held her guilty of the charges enumerated in the memorandum dated 3.1.1983. On the other hand, Ms.Umadevi argued that the four charges found proved against the petitioner in the departmental enquiry were not entirely based on the charge for which the petitioner had been prosecuted and, therefore, the findings recorded by the trial Court cannot be made basis for nullifying the order of punishment.

I have thoughtfully considered the respective submissions. The departmental enquiry is held to discipline the errant employee whereas the prosecution is launched against a person in respect of an act done in violation of the statutory provision, which makes such an act an offence. The approach and object of the criminal proceedings and the disciplinary proceedings are altogether distinguish and different. In the disciplinary proceedings, the employer has to determine whether the delinquent is guilty of such conduct, which may merit his dismissal or removal from service or a lesser punishment may be sufficient. As against this, in the criminal proceedings, the question is whether the offence registered against an individual is proved. The standard of proof and the mode of enquiry are entirely distinguish and different in two types of proceedings.

If the facts of the present case are scrutinized in the backdrop of the above principles, it is not possible to agree with the learned counsel for the petitioner that the charges which were subject matter of the departmental enquiry were founded on the facts which constituted offence under Sections 408, 420 and
417 IPC and the petitioner's acquittal by the learned Additional Magistrate of First Class, Kothagudem should be made basis for invalidating the proceedings of enquiry. A cursory reading of judgment dated 19.3.1992 rendered by the trial Court in Criminal Case No.398 of 1987 may give an impression of similarity between the two sets of allegations but, on a closer scrutiny, I find that at least two of the allegations levelled against the petitioner were not subject matter of criminal case. That apart, some overlapping of the facts which constitute the subject matter of criminal trial and the departmental enquiry can never be made a ground for interference with the disciplinary proceedings and the conclusion recorded by the competent departmental authorities. Moreover, that apart, so far as the petitioner's case is concerned, it is to be noted that the enquiry officer has written the finding of guilty before adjudication of the criminal case. Therefore, the latter's decision cannot be made basis for holding that the enquiry officer erred in recording findings of guilty against the petitioner.

Before concluding, I consider it proper to mention that the parameters for exercise of the High Court's power to issue a writ of certiorari are well defined. Such writ, order or direction can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued where, in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal, etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence

produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

In **Syed Yakoob v. K.S. Radhakrishnan and others** the Constitution Bench of the Supreme Court considered the scope of the High Court's power to issue the writ of certiorari and laid down the following propositions:

> "A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
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> The jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court."

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others** their Lordships of the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

"Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **R.S. Saini v. State of Punjab and others** the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

"The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

The proposition laid down in **Sayed Yakoob** (supra) has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**

We may also notice some decisions, which have bearing on the High Court's power to interfere with the disciplinary proceedings and the order of punishment. In

**State of Orissa v. Bidyabhushan Mohapatra**, the Supreme Court considered whether the High Court can interfere with the order of punishment simply because finding recorded by the enquiry officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition filed by the respondent, their Lordships of the Supreme Court observed:

> "But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanor established. The reasons, which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were 'unassailable', the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanor for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the inquiry officer or the Tribunal prima facie make out a case of misdemeanor, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

In **State of A.P. v. Sree Rama Rao** the Supreme Court indirectly reiterated the proposition laid down in **Bidyabhushan Mohapatra** (supra) and held:

> "The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the

departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding ... under Article 226 of the Constitution."

In **Rly. Board v. Niranjan Singh** the principle laid down in **Bidyabhushan Mohapatra** (supra) was reiterated. In **State of Madras v. G. Sundaram** the Constitution Bench of the Supreme Court laid down the following proposition:

"High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge."

In **State of A.P. v. C. Venkata Rao** a three Judges Bench of the Supreme Court referred to the judgments of **Syed Yakoob** (supra), **Bidyabhushan Mohapatra** (supra), **Niranjan Singh** (supra) and observed:

"In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic tribunal in any inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent

officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal."

In **B.C. Chaturvedi v. Union of India** the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him, highlighted the limited scope of judicial review by making the following observations:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of

that case.

In **Apparel Export Promotion Council v. A.K. Chopra** the Supreme Court again considered the High Court's power to interfere with the disciplinary proceedings and held:

> "It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on *no evidence* or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.
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> Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is *not* concerned with the *correctness* of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.
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> Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

On the basis of the above discussion, I hold that the petitioner has failed to make out a case for judicial intervention with the proceedings held against her and the order of punishment and the writ petition is liable to be dismissed. Ordered accordingly.

The parties are left to bear their own costs.

**G.S.SINGHVI, CJ**

**Msv /svs/vtv**